

COMMERCIAL DIVISION OF THE SUPREME COURT  
ERIE COUNTY, STATE OF NEW YORK

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*Answer Due  
9/23*

DELPHI AUTOMOTIVE SYSTEMS LLC  
5825 DELPHI DRIVE  
TROY, MICHIGAN 48098,

PLAINTIFF,

-VS-

SUMMONS

INDEX No.: *I 2009 010438*

ONTARIO SPECIALTY CONTRACTING, INC.  
*333* ~~222~~ GANSON STREET  
BUFFALO, NEW YORK 14203-3062,

DEFENDANT.

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**TO THE ABOVE-NAMED DEFENDANT:**

**YOU ARE HEREBY SUMMONED AND REQUIRED** to serve upon Goldberg Segalla LLP, attorneys for plaintiff, Delphi Automotive Systems LLC, an answer to the complaint in this action within TWENTY (20) days after the service of this summons, exclusive of the day of service, or within THIRTY (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the defendant's residence, which has a principal office located in the County of Erie, State of New York.

DATED: Buffalo, New York  
August 28, 2009

GOLDBERG SEGALLA LLP

By: 

Richard A. Braden  
Jeffrey A. Carlino  
*Attorneys for Plaintiff*  
665 Main Street, Suite 400  
Buffalo, New York 14202  
Tel. No. (716) 566-5400

FILED  
08/28/2009 14:41:35  
ERIE COUNTY CLERK  
RCPT # 767089  
I 2009010438

COMMERCIAL DIVISION OF THE SUPREME COURT  
ERIE COUNTY, STATE OF NEW YORK

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DELPHI AUTOMOTIVE SYSTEMS, LLC,

PLAINTIFF,

**COMPLAINT**

-vs-

INDEX No.: *I 2009010438*

ONTARIO SPECIALTY CONTRACTING, INC.,

DEFENDANT.

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Plaintiff, Delphi Automotive Systems, LLC ("Delphi") by its attorneys, Goldberg Segalla LLP, for its complaint against defendant in this action alleges as follows:

1. Delphi is a limited liability company organized and existing under the laws of the State of Delaware. Delphi is authorized to do business in the State of New York and has offices, and a place of business, located in Lockport, New York.

2. Upon information and belief, defendant, Ontario Specialty Contracting, Inc. is a domestic business corporation organized and existing under the laws of the State of New York, with offices, and a principal place of business, located in the County of Erie, State of New York.

3. On or about July 24, 2008, representatives for Delphi and defendant entered into a written agreement under which defendant agreed to perform demolition services with respect to Delphi's Die Casting Building, located at 891 Driving Park Avenue and 1000 Lexington Avenue in the City of Rochester, State of New York, for the total amount of \$1.00 (the "Demolition Project"), with a further promise that defendant would pay Delphi a total amount of \$271,033.00 for the unconditional right to sell all scrap metal recovered during the Demolition Project, as set forth in Purchase Order No. 450751581. A copy of Purchase Order No. 450751581 is attached

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I 2009010438

at **Exhibit A** (hereinafter referred to as the “Demolition Project Agreement”).<sup>1</sup>

4. Pursuant to the Demolition Project Agreement, defendant was required to complete the Demolition Project by December 15, 2008.

5. By letter dated January 12, 2009, defendant notified Delphi that it wanted to adjust the material terms of the Demolition Project Agreement, purportedly due to the then-existing state of the “scrap market,” by reducing the total amount of defendant’s payment obligation from \$271,033.00 to \$0.00, with a concomitant request for a \$175,000.00 payment in defendant’s favor. Defendant also sought permission for an extension of the Demolition Project’s completion date from December 15, 2008 to January 30, 2010.

6. Defendant’s January 12, 2009 letter further requested a change order for entitlement to a \$41,500.00 payment/credit from Delphi for “additional asbestos abatement” work and an additional \$22,000.00 payment/credit for “additional utility work.” A copy of defendant’s January 12, 2009 letter to Delphi is attached at **Exhibit B**.

7. Delphi ultimately responded to defendant’s January 12, 2009 request for modifications to the Demolition Project Agreement by letter dated May 11, 2009, under which Delphi conditionally agreed to extend the completion date to November 30, 2009 and to revise payments due with a total amount owing to Delphi of \$187,657.25. A copy of Delphi’s May 11, 2009 letter is attached at **Exhibit C**.

8. By letter dated May 27, 2009, defendant rejected Delphi’s conditional offer to modify the terms of the Demolition Project Agreement. A copy of defendant’s May 27, 2009 rejection letter is attached at **Exhibit D**.

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<sup>1</sup> The Demolition Project Agreement also includes Delphi’s “General Terms and Conditions” for outside contracts and its “Customer Specific Requirements” which may be accessed at [www.delphi.com](http://www.delphi.com) (specifically: [https://delphi.portal.covisint.com/web/portal/fud/-/journal\\_content/56\\_INSTANCE\\_WREV/107627/114795](https://delphi.portal.covisint.com/web/portal/fud/-/journal_content/56_INSTANCE_WREV/107627/114795)).

9. As a result, the terms and conditions of the Demolition Project Agreement remain in full force and effect.

10. To date, defendant has failed and refused to pay Delphi all amounts due and owing under the Demolition Project Agreement and has failed to timely complete its demolition services by December 2008.

11. In addition, and upon information and belief, defendant has failed to pay one or more of its sub-contractors for their work on the Demolition Project, and at least one of those subcontractors has filed a mechanic's lien against Delphi's real property, located at 891 Driving Park Avenue and 1000 Lexington Avenue in the City of Rochester, State of New York (hereinafter the "Demolition Project Property"), in the amount of \$86,000.00, in violation of defendant's obligations under the Demolition Project Agreement.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)**

12. Delphi repeats and realleges each and every allegation set forth in paragraphs 1 through 11 of this complaint as if fully set forth herein.

13. As set forth above, defendant owes contractual obligations to Delphi pursuant to the Demolition Project Agreement.

14. Defendant has materially breached its obligations under the Demolition Project Agreement by, *inter alia*, failing to pay Delphi three out of the four \$67,758.25 installments due and owing, failing to timely complete all demolition obligations, and by permitting one or more sub-contractors to file mechanic's liens against Delphi's real property.

15. Delphi has fully performed under the Demolition Project Agreement, and all conditions precedent (to the extent any exist) have been satisfied.

16. As a direct and proximate result of defendant's material breaches of obligations

owing under the Demolition Project Agreement, Delphi has suffered damages in the amount of not less than \$194,274.75, plus other damages, including the costs and fees incurred in removing or discharging mechanic's liens filed against the Demolition Project Property, in an amount to be proved at trial.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Unjust Enrichment)**

17. Delphi repeats and realleges each and every allegation contained in paragraphs 1 through 16 of this complaint as if fully set forth herein.

18. During the Demolition Project, defendant recovered large quantities of scrap metal (including copper tubing and wire).

19. Upon information and belief, defendant sold the scrap metal that it recovered during the Demolition Project for large sums of money.

20. Pursuant to the Demolition Project Agreement, defendant's payment obligations are not indexed to scrap market prices, conditions, or fluctuations and, once the Demolition Project Agreement's terms were established, up or down variations in scrap metal market values were solely at defendant's advantage or risk.

21. Upon information and belief, defendant received large sums of money based upon its sale of scrap metal removed from the Demolition Project.

22. Defendant, having received large sums of money for scrap metal that it recovered during the Demolition Project, has refused and neglected, and continues to refuse and neglect, to pay monies due and owing to Delphi and, upon information and belief, has refused and neglected to pay subcontractors resulting in the filing of one or more mechanic's liens against the Demolition Project Property.

23. Defendant has been unjustly enriched at Delphi's expense.

24. As a direct and proximate result of defendant's misconduct, Delphi has suffered the damages complained of herein.

WHEREFORE, Delphi demands that this Court grant judgment in its favor and against defendant in an amount no less than \$194,274.75, plus interest at the statutory rate, attorneys' fees, costs, and disbursements associated with, among other things, the removal or discharge of all liens asserted against the Demolition Project, and such other and further relief as provided by law and rule and as the court deems just and proper.

Dated: Buffalo, New York  
August 28, 2009

GOLDBERG SEGALLA LLP

A handwritten signature in black ink, appearing to be 'R. Braden', is written over a horizontal line.

Richard A. Braden  
Jeffrey A. Carlino  
*Attorneys for Plaintiff*  
665 Main Street, Suite 400  
Buffalo, New York 14203  
Telephone: (716) 566-5400

# **EXHIBIT A**

# DELPHI

Energy & Chassis Systems

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<b>Buyer:</b>
DELPHI AUTOMOTIVE SYSTEMS LLC DELPHI ENERGY & CHASSIS DIV 3000 University Drive Auburn Hills MI 48326

<b>Deliver to:</b>
DELPHI ENERGY & CHASSIS SYSTEMS ROCHESTER OPER-INIC DOCK 87/88/89 -7AM-3PM 1000 LEXINGTON AVE ROCHESTER NY 14606

ONTARIO SPECIALTY CONTRACTING 333 GANSON ST BUFFALO NY 14203-3062
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<b>Purchase Order</b>	
PO Number 450751581	Date Issued 24-Jul-2008
Version 24-Jul-2008 12:22:27	

Delivery date: 01-DEC-2008
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Vendor No: 1033101
DUNS No: 178523494

<b>Payment Terms:</b> ZMN3	<b>Currency:</b> USD
Payment settled on 2nd day of 3rd Month	
<b>Incoterms:</b> FOB- Freight Collect	

Item No.	Material No/Item Identifier No	Total Order Quantity	Plant	Requester		
00010	PR13390208 00010	1.000	E401 DELPHI	E & C	ROCHESTER	
DECOMMISSIONING & DEMOLITION OF DIE R.RANDAZZO						
CASTING BUILDING PER DELPHI SPECIFICATION PE-1386 AND INQUIRY 2008-HM66. GENERAL TERMS & CONDITIONS FOR OUTSIDE CONTRACTS SHALL APPLY. SUPPLIER TO PAY DELPHI \$271.033						
Delivery Date	Scheduled Quantity	Price	Price Unit	UOM	Value	
01-DEC-2008	1.000	1.00	1	EA	1.00	
Net Line Item Value					USD	1.00
Total net value			USD		1.00	

<b>Purchasing Contact:</b> Martinez, Hugo <b>Phone:</b> 915 612-8775 <b>Fax:</b> 915 612-1146  Buyer Email: hugo.f.martinez@delphi.com	<b>Contact Address:</b> Buyer, Delphi Corporation Hernamos Escobar 5756, 32310 Juarez
Date and Time Printed: 24-Jul-2008 12:22:27	



# DELPHI

Energy & Chassis Systems

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ONTARIO SPECIALTY CONTRACTING  
333 GANSON ST  
BUFFALO NY 14203-3062

## Purchase Order

PO Number	Date Issued
450751581	24-Jul-2008
Version	
24-Jul-2008 12:22:27	

Item No.	Material No/Item Identifier No	Total Order Quantity	Plant
Description			Requester

### Notes:

Purchase order is issued as per Ontario specialty response to RFQ No. 2008-HM-66 - Rochester Die Casting Building Demolition and subsequent responses to target price letters.

Ontario Specialty Contracting will pay Delphi the amount of \$271,033.00 usd under the following schedule

25% (\$67,758.25) at issuance of work permits start of physical work

25% (\$67,758.25) at start of structural Demolition

25% (\$67,758.25) at completion of Demolition

25% (\$67,758.25) at sign off of the work

### IMPORTANT NOTICE TO SUPPLIERS:

PLEASE COMPLY STRICTLY WITH DELPHI'S ENVIRONMENTAL REQUIREMENTS AS STATED IN THE ENVIRONMENTAL REQUIREMENTS FOR CONTRACTORS / SUPPLIERS / VENDORS. A COPY OF THE ENVIRONMENTAL REQUIREMENTS IS AVAILABLE UPON WRITTEN REQUEST TO THE BUYER.

Delphi requires 100% on time delivery performance from suppliers. If you anticipate problems in delivering materials and/or completing services by the date specified on the Buyer's purchase order, the Delphi Buyer should be notified immediately.

Restricted, toxic, and hazardous materials - Suppliers are required to comply with current governmental and safety constraints on restricted, toxic and hazardous materials; as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. This relates to both the salable product and the manufacturing processes. (Refer also to Terms and Conditions No. 8 "Ingredients Disclosure and Special Warnings Instructions").

Commencement of any work or service under this order shall constitute seller's acceptance of these responsibilities. If you do not accept these responsibilities, please contact the appropriate Delphi's Buyer.

Seller acknowledges and agrees that Buyer's General Terms and Conditions and Delphi Customer Specific Requirements are incorporated in, and a part of, this contract and each purchase order, release, requisition, work order, shipping instruction, specification and other document issued by Buyer or accepted in writing by Buyer, whether expressed in written form or by electronic data interchange, relating to the goods and/or services to be provided by Seller pursuant to this contract (such documents are collectively referred to as this "Contract"). A copy of Buyer's General Terms and Conditions and Delphi Customer Specific Requirements are available upon written request to Buyer or via the internet at Delphi's website, delphi.com. Seller acknowledges and agrees that it has read and understands Buyer's General Terms and Conditions and Delphi Customer Specific Requirements. If Seller accepts this Contract in writing or commences any of the work or services which are the subject of this Contract, Seller will be deemed to have accepted this Contract and Buyer's General Terms and Conditions and Delphi Customer Specific Requirements in their entirety without modification. Any additions to, changes in, modifications of, or revisions of this Contract (including Buyer's General Terms and Conditions and Delphi Customer Specific Requirements) which Seller proposes will be deemed to be rejected by Buyer except to the extent that Buyer expressly agrees to accept any such proposals in writing.

# DELPHI

Energy & Chassis Systems

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ONTARIO SPECIALTY CONTRACTING  
333 GANSON ST  
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## Purchase Order

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### Notes Continued:

All wood packaging must be compliant with the International Standard Phytosanitary Measure #15 in the treatment of wood packaging material. Please reference the "Requirements for the treatment of wood packaging materials" section of the Supplier Community Portal found on [www.delphi.com](http://www.delphi.com) for further details.

\*\*\*\*\*  
Title to goods shall transfer from seller to buyer upon arrival at buyer's consuming plant.  
\*\*\*\*\*

\*\*\*\*\*  
If this is your first purchase order with Delphi under this DUNS number or your remittance information has changed, you need to establish a payment link with the following:

Delphi Corporation EAG Disbursements Center  
Vendor Name and Address Group  
PO Box 972930  
El Paso, Texas 79997-2930  
Fax 915-612-7152  
Attention: Vendor Master Group

Delphi Accounts Payable Help Desk Phone Number is (888)856 6779 or E-mail at [juarez.delphia.helpdesk@delphi.com](mailto:juarez.delphia.helpdesk@delphi.com).

You will need to provide a copy of invoice or letterhead showing, company name, correct remittance and correspondence addresses, contract number and "ship from" DUNS number.

You should have received an EFT Agreement from your buyer. But you can obtain a copy of the EFT Agreement forms at Website at [www.delphi.com](http://www.delphi.com) <<http://www.delphi.com>> Double Click on "Supplier Portal" in the bottom right of the screen, then click "HERE" under How to Become a Supplier. Then click on "Doing Business with Delphi" under Frequently Used Documents. Click on "Delphi Customer Specific Requirements". Scroll to the Payment Section. Then can Click on "EFT Payment Authorization Form" to download.

You can now view payment status on-line using e\*DELPHIPAY. For new users, the registration instructions are at <http://delphi.covisint.com> under the Registration tab Please contact the Delphi Help Desk at 877-7DELPHI for any technical questions

This order will pay on receipt. Please do not send an invoice unless specifically requested on the order. This is an invoice less system, which generates payment, based on receipt.

If this P O is in error, please advise the buyer listed below before shipping.

Payment issues and questions regarding shipped material should be directed to the Delphi Accounts Payable Help Desk at (877)349 3417.

**DELPHI**

Energy & Chassis Systems

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ONTARIO SPECIALTY CONTRACTING  
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Description			Requester

Notes Continued:

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\*\*\*\*\*  
Do not bill sales or use tax on items delivered to locations within the states listed below. Delphi Automotive Systems, LLC ("DELPHI") holds direct pay authority with these states. As a result, in all of the identified states DELPHI will remit directly to taxing authorities, all sales or use tax liability related to its purchase and use of tangible personal property and services. Therefore, effective immediately, this tax clause supersedes all tax code information found on this order except for those states not identified below. For those states not identified below, please continue to follow the specific tax code instructions found on this order. Listed below are Direct Pay Permit or Sales Tax License numbers for the eleven (11) states, or DELPHI locations within a state, where DELPHI holds direct pay authority:

Alabama -----805  
New Jersey -----383-431-131/000  
Georgia -----300-45870-8  
New York -----DP-3487  
Indiana -----1018702130011  
Ohio -----98-0002667  
Kansas -----98-0003a  
Texas -----1-38-3431131-1  
Michigan -----38-3431131  
Wisconsin -----WDP-99-01-010037  
Mississippi -----4375

If this order relates to a construction contract for real property, all applicable sales and use taxes are the responsibility of the contractor, and should be included in the contractor's bid as required pursuant to Section 7 of the DELPHI 1638 (8/00 Rev A), "Construction General Conditions", unless the responsibility for payment of sales & use taxes are otherwise specifically outlined in the contract

Questions should be directed to: Delphi Disbursement - Customer Service Phone, (248) 874-4636

\*\*\*\*\*

\*\*\*\*\*  
A PROPERLY COMPLETED CERTIFICATE OF ORIGIN,  
NAFTA CERTIFICATE WHERE APPLICABLE (CUSTOMS FORM 434)  
AND A MANUFACTURERS AFFIDAVIT STATING THE COUNTRY OF  
ORIGIN BE INCLUDED WITH THE SHIPPING DOCUMENTS FOR  
THE MATERIAL ON THIS PURCHASE ORDER. (NT)  
\*\*\*\*\*

**DELPHI**

Energy & Chassis Systems

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ONTARIO SPECIALTY CONTRACTING  
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Notes Continued:

\*\*\*\*\*  
CERTIFICATE OF INSURANCE GENERAL

CONTRACTOR SHALL OBTAIN AND MAINTAIN CONSISTENT WITH THE PROVISIONS OF THIS CONTRACT, AT ITS SOLE EXPENSE, THE FOLLOWING TYPES OF INSURANCE COVERAGE, TO REMAIN IN FORCE DURING THE TERM OF THIS CONTRACT, WITH MINIMUM LIMITS AS SET FORTH BELOW:

1. COMMERCIAL GENERAL LIABILITY COVERING LIABILITY ARISING FROM PREMISES, OPERATIONS, INDEPENDENT CONTRACTORS, PRODUCTS - COMPLETED OPERATIONS, PERSONAL AND ADVERTISING INJURY, AND BLANKET CONTRACTUAL LIABILITY - US \$5,000,000 EACH OCCURRENCE.

2. BUSINESS AUTOMOBILE LIABILITY COVERING ALL OWNED, HIRED AND NON-OWNED VEHICLES - US \$5,000,000 EACH OCCURRENCE, INCLUDING ALL APPLICABLE STATUTORY COVERAGES.

3. WORKERS COMPENSATION - STATUTORY LIMITS FOR ALL STATES OF OPERATION

4. EMPLOYERS LIABILITY - US \$1,000,000 EACH EMPLOYEE FOR BODILY INJURY BY ACCIDENT AND US \$1,000,000 EACH EMPLOYEE FOR BODILY INJURY BY DISEASE.

5. PROFESSIONAL/ERRORS AND OMISSIONS LIABILITY INSURANCE APPROPRIATE TO THE CONTRACTOR'S PROFESSION. COVERAGE SHOULD ALSO BE FOR A PROFESSIONAL ERROR, ACT OR OMISSION ARISING OUT OF THE SCOPE OF SERVICES SHOWN IN THIS CONTRACT - US \$1,000,000 PER OCCURRENCE (ONLY IF PERFORMING CONSULTING ALONG WITH ACTUAL SITE WORK, IF NO CONSULTING, THIS PROVISION CAN BE DELETED)

ALL POLICIES OF INSURANCE PROCURED BY CONTRACTOR HEREIN SHALL BE WRITTEN AS PRIMARY POLICIES; NOT CONTRIBUTING WITH OR IN EXCESS OF COVERAGE THAT DELPHI MAY CARRY. IF CONTRACTOR'S LIABILITY POLICIES DO NOT CONTAIN THE STANDARD SEPARATION OF INSURED'S PROVISION, OR A SUBSTANTIALLY SIMILAR CLAUSE, THEY SHALL BE ENDORSED TO PROVIDE CROSS-LIABILITY COVERAGE. CONTRACTOR SHALL AGREE TO WAIVE THEIR INSURER'S RIGHT SUBROGATION UNDER ITS POLICIES. DELPHI SHALL BE AN ADDITIONAL INSURED UNDER CONTRACTOR'S INSURANCE POLICY (EXCEPT WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY), AND AT DELPHI'S REQUEST, CONTRACTOR SHALL PROVIDE DELPHI WITH A CERTIFICATE OF INSURANCE EVIDENCING COMPLIANCE WITH THE LIMITS, INSURANCE REQUIREMENTS AND WAIVER OF SUBROGATION SET FORTH ABOVE. SUCH CERTIFICATE SHALL BE IN A FORM ACCEPTABLE TO, AND UNDERWRITTEN BY AN INSURANCE COMPANY REASONABLY SATISFACTORY TO DELPHI AND WITH AN A.M.BEST COMPANY RATING OF A- OR ABOVE. BY REQUIRING INSURANCE HEREIN, DELPHI DOES NOT REPRESENT THAT COVERAGE AND LIMITS WILL NECESSARILY BE ADEQUATE TO PROTECT CONTRACTOR. THE PURCHASE OF APPROPRIATE INSURANCE COVERAGE BY CONTRACTOR OR THE FURNISHING OF A CERTIFICATE OF INSURANCE SHALL NOT RELEASE CONTRACTOR FROM ITS RESPECTIVE OBLIGATIONS OR LIABILITIES UNDER THE AGREEMENT.

MAIL ABOVE TO THE BUYER OF RECORD NOTED AT THE BOTTOM OF  
OF THE PURCHASING DOCUMENT.  
(FAX, PHONE AND ADDRESS BE PROVIDED)

# DELPHI

Energy & Chassis Systems

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ONTARIO SPECIALTY CONTRACTING  
333 GANSON ST  
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## Purchase Order

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### Notes Continued:

CONTRACTORS ARE ADVISED THAT THEIR EMPLOYEES MAY HAVE  
THE POTENTIAL OF EXPOSURE TO WORKPLACE CHEMICALS  
CONCERNS REGARDING THIS MATTER CAN BE DIRECTED TO  
DELPHI CORP ENGINEERING DEPT. CONTACT YOUR BUYER OF RECORD  
FOR A LOCAL CONTACT NUMBER.

Work described herein shall be performed in accordance with Delphi Corporation Construction General Conditions Delphi 1638 (including Insurance Coverages and Certification Requirements), provided with the initial request for quotation. Contractor Specifications and the safety rules and precautions are established by the Contracting Delphi Site's Safety Department.

# **EXHIBIT B**



Ontario Specialty Contracting, Inc.

Environmental Remediation / Demolition / Dismantlement

January 12, 2009

Mr. Robert Randazzo  
Delphi Powertrain  
1000 Lexington Ave.  
Rochester, New York

RE: DIE CAST DEMOLITION

Dear Bob,

I would like to continue our discussion with Delphi concerning the state of the current scrap market and our contract with Delphi for the Demolition and Decommissioning of the Aluminum Die Cast Plant.

As we discussed, the Market value of the scrap metal funding the Demolition & Decommissioning of the Aluminum Die Cast Plant has dropped significantly from \$1,326,850 to an estimated \$451,750 (based on current pricing). This unprecedented drop is an unforeseen condition that could not have been reasonably predicted.

As a direct result of the change of condition, OSC is proposing the following:

- A revision to the Original Contract value from <\$271,033> to \$175,000
- A revision to the completion date from December 15, 2008 to January 30, 2010 (allowing OSC to store scrap metals onsite until market conditions improve) a bi-monthly review will be held between OSC and onsite Delphi Representatives to discuss market outlook
- A change order to be paid to OSC immediately for additional work completed
  - Additional Asbestos Abatement - \$41,500
  - Additional Utility Work - \$22,000

Based on the above OSC is expecting to lose \$200,000 to 300,000 on the project, depending on the market conditions going forward. We have to date spent on a cash to cash basis approximately \$600,000. OSC is continuing to complete the project and trying to mitigate expenses. However, this changed condition is too significant in scope and magnitude to overcome.

Please contact me at your earliest convenience to set up a meeting with the appropriate parties to discuss this issue.

Sincerely,

Peter M. Hartung Jr., P.E.  
Sr. Project Manager  
Ontario Specialty Contracting

# **EXHIBIT C**



**DELPHI**

Powertrain Systems  
Gas Engine Management Systems

May 11, 2009

Peter M. Hartung Jr., P.E.  
Sr. Project Manager  
Ontario Specialty Contracting

RE: DIE CAST DEMOLITION

Dear Peter,

We have reviewed your letter/proposal dated January 12, 2009.

While Delphi certainly acknowledges that the scrap market has experienced a drastic and rapid decline we, like Ontario Specialty Contracting, cannot predict future values or when a market recovery may occur. As a result, we are willing to assist OSC with the following:

1. We agree to revise the completion date from December 15, 2008 to November 30, 2009 to allow time for scrap market conditions (scrap values) to improve. No extensions beyond this date will be granted. Recyclable scrap material left after this date will be owned by Delphi. We will allow OSC to store prepared scrap metals onsite provided the following conditions are met:
  - a. Prepared scrap metals will be maintained in a neat, orderly fashion either within the project site footprint or, in the empty north parking lot currently used by OSC for project staging. Delphi will not be responsible for materials stored in the parking lot.
  - b. Bi-monthly meetings between OSC, on-site Delphi and, Delphi Purchasing Representatives will be held to review market outlook, scrap values and, scrap quantities from the demolition. Actual weights of scrap material removed from the job site will be compared to quantities used by OSC for development of their Delphi accepted project bid. Obviously a greater quantity of metal to be reclaimed would reduce the financial impact of reduced market values on the project. Both parties will agree on a standard index to be used to determine current scrap values.
  - c. No third party (i.e; City of Rochester, DEC, etc) requires, orders or otherwise requests action that the site be cleared/cleaned to expedite project completion prior to November 30, 2010.

2. Because Delphi itself is experiencing great financial difficulty, as a result of being in Chapter 11 since 2005 and due to current economic conditions, it is impossible for Delphi to commit any payments to Ontario Special Contracting.

3. Changes to payments due to Delphi for additional work will be deducted from payments owed to Delphi as outlined below:

\$271,033.00	Total payments due to Delphi per original contract
- \$ 67,758.25	1 of 4 payments received
- \$ 42,000.00	Additional Asbestos Abatement
- \$ 7,315.00	Additional Utilities Work
+ \$ 5,197.50	Third Party Air Monitoring for Asbestos Abatement
+ \$ 28,000.00	100 GT @\$280 per GT Scrap Die Cast Molds
<u>\$ 187,657.25</u>	Balance Due to Delphi

4. Milestone dates for two equal payments to Delphi for the balance due will be established. One payment will be on June 30, 2009 and the second on November 30, 2009. Scrap market values, materials sold and project financials up to each date will be reviewed.

Sincerely,

Hugo Martinez

# **EXHIBIT D**



Ontario Specialty Contracting, Inc. \_

Environmental Remediation II Demolition / Dismantlement

May 27, 2009

Hugo Martinez  
Delphi GSM - Construction

Re: Equitable Adjustment to Rochester Die Casting Building Demolition Contract

Dear Hugo:

I write in response to your letter of May 11, 2009. Delphi's offer is unacceptable. Please recall that Delphi expressly negotiated this contract on the premise that the scrap metals would fund approximately \$1.2M of the project costs and sought a credit for such materials. As the market increased, Delphi continuously demanded a larger scrap credit.

As your letter acknowledges, that scrap credit and source of project funding did not hold true, through no fault of Ontario Specialty Contracting ("OSC"), and turned this project completely upside down. OSC proceeded in good faith and in reliance on representations from Delphi that an adjustment would be forthcoming. Now that the project work is substantially complete, Delphi has refused adjustment and payment to OSC because "Delphi itself is experiencing great financial difficulty. . ." That response is not palatable.

It is unconscionable to expect OSC to absorb a \$728,165 loss in project funding on account of the parties' mutually mistaken belief that the scrap metal market would not collapse, and therefore would serve as a substantial funding source for the demolition work. When the collapse occurred, the issue was immediately brought to Delphi's attention. OSC continued to perform in reliance on Delphi's conduct and representations, and both parties were hopeful that the market would recover. It did not.

We propose (without prejudice) that the parties equally absorb the loss of project funding in an effort to resolve this dispute. Under that scenario, Delphi owes OSC \$195,927.25, calculated as follows: (\$728,165 loss in funding X .5) - \$168,155.25 = \$195,927.25). In the absence of agreement, we will be forced to pursue legal proceedings and will seek to recover the full claim.

Please advise promptly as we have been carrying these costs for some time.

Very truly yours,

Peter Hartung  
Sr. Project Manager  
ONTARIO SPECIALTY CONTRACTING INC.